IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14777 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAH MOHANLAL KAJODIMAL

Versus

M.S.T.C. LTD.

Appearance:

1. Special Civil Application No. 14777 of 2004

MR BHARAT T RAO for Petitioner No. 1

MS LILU K BHAYA for Respondent No. 1-2

NOTICE UNSERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 06/04/2005

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order directing the respondent No.1 M/s. MSTC Limited to extend the validity of the tender for Lot No. 357 for 65 M.Ts. scraps lying

at NTPC, Korba, State of Chhatisgarh as the petitioner is ready and willing to perform his contractual obligation pursuant to the advertisement given by the respondent No.1 on its Website, and, alternatively, it is prayed to quash and set aside the letter dated 30th October 2004 whereby it was informed that the amount of security deposit has been forfeited. It is further prayed to direct the respondent No.1 to refund the security deposit of Rs. 2,42,010 which the petitioner has made on 31st May 2004.

2. It is the case of the petitioner that respondent No.1, M/s. MSTC Limited is a Government of India enterprise and holding public auctions by giving advertisements through its Website for various scrap items lying in the Government owned Corporations situate at various parts of the country and the dispute is with regard to the material lying at NTPC, Korba, Chhatisgarh for the sale of Lot No. 357 of 100 MTs. valued at Rs. 24,20,100 of scrap steel of Nihard Liners, Bull Ring Segment, Wear Plate etc., It is the case of the petitioner that the respondent has given an advertisement on its Website for the public auction of the abovesaid material of NTPC, Korba and the petitioner sent a communication through e.Mail on 20th May 2004 where the petitioner has quoted the price of Rs. 24,20,100 which has been accepted by the respondent and payment of security deposit amount was also made by the petitioner within 7 days from the date of intimation by e.Mail regarding acceptance of the bids being 10 per cent of the quoted basic value. It is the case of the petitioner that on deposit of the amount as security deposit, as per the terms and conditions more particularly as per Condition No. 10 the sale order is required to be issued and the purchaser will have to deposit the balance value of the materials within 15 days from the date of issuance of the sale order. It is the case of the petitioner that inspite of deposit of an amount of Rs. 2,42,010 made as security deposit no sale order was issued in favour of the petitioner and therefore by communication dated 5.8.2004 through e.Mail it was requested to issue the sale order and thereafter also by different communications the petitioner requested either to issue sale order and/or to refund the amount of security deposit. It is the case of the petitioner that initially by communication dated 25.10.2004 the petitioner was informed and asked to get NOC from NTPC, however, subsequently by letter dated 30th October 2004 the petitioner is informed that the petitioner has defaulted in making payment till 17.6.2004 and therefore the security deposit is forfeited. It is the case of the

petitioner that by letter dated 30th October 2004 the petitioner received a duplicate acceptance letter No. MSTC/ERO/04/05/10 dated 3.6.2004 which came to be received only on 30th October 2004 and therefore the petitioner preferred the present Special Civil Application for the aforesaid reliefs more particularly with regard to refund of the amount of security deposit.

3. Shri BT Rao, learned advocate appearing for the petitioner had in fact submitted that the petition is restricted for the relief of refund of security deposit only and that is how this Court is dealing with the prayer of the petitioner with regard to refund of the security deposit only. Shri BT Rao has submitted that the petitioner made the security deposit on 28.5.2004 and as per the terms and conditions of the tender on receipt of the security deposit MSTC was required to issue a sale order and the petitioner was required to deposit the balance value of the materials within 15 days from the date of issue of sale order and in the present case when the petitioner has not received any sale order there was no question of any deposit by the petitioner within 15 days and therefore the action of the respondents in forfeiting the security deposit on the ground that the petitioner has not paid and/or deposited the balance value of the materials within 15 days is absolutely illegal, most arbitrary which requires to be quashed and set aside. It is submitted that in fact the petitioner had not received any letter of acceptance and/or sale order and the petitioner came to be served with the duplicate acceptance letter only on 30th October 2004, and therefore it is requested to allow the present Special Civil Application as prayed for by directing the respondents to refund the security deposit which comes to Rs. 2,42,010 with the interest at the rate of 18% p.a.

4. In response to the notice issued by this Court, Ms. Lilu K. Bhaya, learned advocate appears on behalf of respondent No.1 and an affidavit-in-reply is also filed on behalf of respondent No.1. It is submitted that after making security deposit the petitioner was communicated by acceptance letter dated 3.6.2004 and after deducting the amount of security deposit the petitioner was requested to deposit RS. 21,78,090 for the Lot No. 357 by 17th June 2004 and the petitioner was also informed that in case the petitioner fails to make payment towards the material value the security deposit shall be forfeited and as the petitioner has not deposited the amount for the aforesaid Lot by 17.6.2004 the security deposit has been forfeited as per the conditions of the tender. It is further submitted that

the petitioner was issued sale acceptance letter dated 3.6.2004 through Internet/computer and he was informed that he was required to pay upto 17.6.2004 the remaining amount of Rs. 21,78,090 by demand draft as per the special terms and conditions of the said e.auction and as the petitioner has not deposited the amount the security deposit is rightly forfeited and therefore it is requested to dismiss the present Special Civil Application.

5. It appears from the record that on deposit of the security deposit on 31st May 2004 the sale order/acceptance letter came to be issued on 3.6.2004 and as per the terms and conditions of the tender and the e.auction the petitioner was required to deposit the balance amount within the period of 15 days, i.e.,on or before 17th June 2004 which the petitioner had not done. It is the case of the petitioner that the petitioner was not served with any letter of acceptance and/or sale order and the petitioner came to be served with the duplicate letter of acceptance only on 30th October 2004. On the other hand, it is the case of the respondent that in fact the sale letter/acceptance letter came to be issued and served upon the petitioner. These are words against words and are all disputed questions of facts namely whether the petitioner was served upon the sale order or not cannot be decided in a petition under Article 226 of the Constitution of India. The proper remedy for the petitioner is to file a suit, and on appreciation of evidence a decision can be taken whether the petitioner came to be served with the sale order/letter of acceptance dated 3.6.2004 or not. Therefore the petition under Article 226 of the Constitution of India is not required to be entertained and the disputed question of fact whether the letter of acceptance/sale order dated 3.6.2004 was served upon the petitioner at earlier point of time or not cannot be decided in a petition under Article 226 of the Constitution of India.

6. Under the circumstances, the present Special Civil Application is required to be dismissed and is accordingly dismissed. Notice is discharged.

{ M.R. Shah, J. }

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